

REMARKS

Claims 1-50 are pending in the present application. The rejections under 35 U.S.C. 103 of claims 34, 35, 40, 41 and 46-50 are respectfully traversed. However, in order to further the prosecution of this application, claims 34, 40, 46 and 49 have been amended in order to further distinguish them from the cited art. Support for the claim amendments can be found in the specification and drawings, in particular in paragraphs 0046-0055 of the published version of the present application US 2005/0094675 A1, Pub. Date May 5, 2005. No new matter has been added. Applicants believe that the present application as amended is now in condition for allowance of which prompt and favorable action is respectfully requested.

By this amendment, claim 20 has been amended to cure typographical errors noticed by the Applicants.

35 U.S. C. 103 Rejection

Claims 34, 35, 40, 41 and 46-50 were rejected under 35 U.S.C. 103(a) as being unpatentable over Walton et al. (US 7,047,016 B2) in view of Jaenecke et al. (US 7,028,093 B2). The MPEP recited the standard to be applied in an issue of obviousness under 35 USC 103. Section 2143.03 of the MPEP states in part:

ALL CLAIM LIMITATIONS MUST BE CONSIDERED

"All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

As amended, independent claims 34, 40, 46 and 49 recite the claim element of “wherein the multiple packets are superimposed using superposition coding.” The element of superimposing multiple packets is not disclosed in Walton as admitted in the Office Action on page 2 which states “Walton does not disclose transmitting multiple packets that are superimposed together from the base station to the K user stations.”

Furthermore, as amended, the claim element of “wherein the multiple packets are superimposed using superposition coding” is not disclosed in Jaenecke. The Office Action on page 2 cites to Jaenecke, Col. 3:35-45 and Col. 4:52-60, as disclosing “user data packet is superimposed on reference data packet...” Although superimposing is mentioned, Jaenecke does not disclose superimposing multiple packets using superposition coding. In contrast, Jaenecke discloses that “orthogonal CDMA codes are used as communication codes.... The user data packets to be transferred are coded with at least one communication code and transmitted parallel in time to the reference data packets and superimposed on these.” *Jaenecke (US 7,028,093 B2), Col 3:54 to Col. 4:55*. Thus, Jaenecke does not disclose superposition coding which is distinct from orthogonal CDMA codes. As recited in amended independent claims 34, 40, 46 and 49, superposition coding is used in superimposing the multiple packets. Thus, the cited secondary reference (Jaenecke) does not make up for the deficiency of Walton, contrary to the assertions in the present Office Action.

In view of the remarks made above that Walton and Jaenecke do not disclose the claim elements “wherein the multiple packets are superimposed using superposition coding” as recited in independent claims 34, 40, 46 and 49 either separately or in combination, a prima facie case of obviousness is not supported.

With respect to the rejected dependent claims 35, 41, 47-48 and 50, which respectively depend from the amended independent claims 34, 40, 46 and 49 addressed above, these dependent claims are believed to be allowable based on their dependencies, as well as on their merits.

CONCLUSION

Thus, the cited references, either taken separately or in combination, do not disclose, teach, suggest or make obvious all of the features of the rejected claims and the rejection under 35 U.S.C. 103(a) should be withdrawn accordingly.

ALLOWABLE SUBJECT MATTER

Applicants thank the Examiner for indicating the allowability of claims 1-33.

Additionally, the Office Action states on page 4 that “[c]laims 36-39,42-45 are objected to as being dependent upon a rejected base claim.” Applicants thank the Examiner for this indication of allowability, but maintain that the amended independent claims 34 and 40, from which claims 36-39 and 42-45 respectively depend are allowable. Accordingly, no amendment is necessary at this time.

REQUEST FOR ALLOWANCE

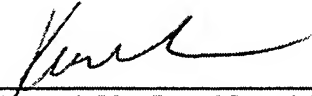
In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Applicants do not believe that any fees are due regarding this amendment. However, if any fees are required, please charge Deposit

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Account No. 17-0026. Applicants encourage the Examiner to telephone the Applicants' attorney should any issues remain.

Respectfully submitted,

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By: 
Kenneth Vu, Reg. No. 46,323

QUALCOMM Incorporated
Attn: Patent Department
5775 Morehouse Drive
San Diego, California 92121-1714
Telephone: (858) 658-5106
Facsimile: (858) 658-2502